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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

V.L., *et al.*,

Plaintiffs

v.

WAGNER, *et al.*,

Defendants

) Case No.: CV 09-04668 JSW

) **[PROPOSED] PRELIMINARY**
) **INJUNCTION ORDER**

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Plaintiffs' Motion for a Preliminary Injunction came before this Court for consideration on October 16, 2009. Upon consideration of the motion, and for good cause shown, IT IS HEREBY ORDERED that the motion is GRANTED.

Individuals who receive In Home Supportive Services ("IHSS") services have previously been determined to need these services in order to live safely in their own homes, and plaintiffs have submitted substantial evidence showing this to be true. Termination of eligibility for all IHSS services, or the termination of domestic and related IHSS services, will cause those individuals irreparable harm in the form of imminent risk of injuries, health deterioration, homelessness, and unnecessary institutionalization. It will further cause additional harm in the form of increased demands upon other public services. Plaintiffs have therefore demonstrated a likelihood of

1 irreparable injury if IHSS services are terminated or reduced, and that the balance of equities and
2 public interest weigh heavily in favor of an injunction to preserve the status quo.

3 Plaintiffs have also demonstrated a strong likelihood of success on the merits of their claims.
4 The use of functional ranks and Functional Index Scores as a basis to terminate IHSS services is
5 arbitrary and discriminates against individuals with cognitive and psychiatric disabilities. The State
6 itself has admitted that these figures are not meaningful measures of the level of risk these
7 individuals will face if they lose IHSS services. County social workers following state statutes and
8 regulations have assessed these individuals to need the authorized IHSS services in order to remain
9 safely in their own homes. As such, they violate the comparability, reasonable standards, and
10 sufficiency requirements of the Medicaid Act, as well as the Americans with Disabilities Act
11 (“ADA”) and Section 504 of the Rehabilitation Act. Further, Plaintiffs have shown that these
12 terminations of service place members of the plaintiff class at risk of institutionalization, in violation
13 of the integration mandate of the ADA and Section 504. Finally, Defendants’ notice is inadequate to
14 apprise IHSS recipients of the reasons for termination and whether they should challenge those
15 reasons at an administrative hearing, and thus violates due process.

16 Accordingly, IT IS HEREBY ORDERED that Defendants, their officers, agents, servants,
17 employees, and attorneys, and all persons acting by, through, under, or in concert with Defendants
18 are enjoined from taking any actions to implement the provisions of California ABX4 4 that amend
19 Sections 12309(e) and 12309.2 of the Welfare and Institutions Code to terminate from eligibility for
20 IHSS services those recipients with Functional Index Scores of less than 2.0 and to eliminate
21 domestic and related services for recipients with functional ranks of less than 4 for those services.
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IT IS SO ORDERED:

DATED: _____

Hon. Jeffrey S. White
United States District Judge